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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 63/98, in which the Secretary-General was requested to report to the General Assembly at its sixty-fourth session on the implementation of the resolution. The period covered by the report is September 2008 to August 2009.

On the basis of material submitted by the Office of the United Nations High Commissioner for Human Rights, the report describes a number of key aspects of the humanitarian and human rights situation in the Occupied Palestinian Territory.

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I. Introduction

1. The present report addresses progress made in the implementation of resolution 63/98, and specifically highlights:

(a) The humanitarian and human rights situation in the Gaza Strip and Israel;

(b) The policy of closures and severe restrictions on freedom of movement in the Occupied Palestinian Territory;

(c) The wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and its impact on the enjoyment of human rights;

(d) Palestinian house demolitions and forced displacement in Area C and East Jerusalem;

(e) Palestinian child prisoners in Israel.

2. A more comprehensive review of the human rights situation in the Occupied Palestinian Territory can be found in the report of the United Nations High Commissioner for Human Rights (A/HRC/12/37) mandated by the Human Rights Council in its resolution S-9/1. The question of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, is addressed in a separate report (A/64/516) prepared pursuant to General Assembly resolution 63/97. The present report relies heavily on information made publicly available by the Office for the Coordination of Humanitarian Affairs (see http://www.ochaopt.org).

II. Progress in the implementation of the resolution

A. The blockade of Gaza

3. As of August 2009, the blockade of the Gaza Strip entered its third year. In September 2007, subsequent to the Hamas takeover of governmental functions in the Gaza Strip in June 2007, Israel declared Gaza a "hostile territory", closing its borders to exports, severely restricting imports and imposing a travel ban to and from Gaza.[1]

4. On 27 December 2008, following the expiration of the *tahdiya* (the Egyptian-brokered truce between Israel and the Hamas-led government in Gaza) on 19 December 2008, Israel launched Operation Cast Lead. The human rights and humanitarian situation, which was already acute prior to the commencement of Operation Cast Lead, further deteriorated. The consequences of Operation Cast Lead on the Palestinian population of the Gaza Strip have been documented in numerous reports (see, for example, A/HRC/12/37; A/HRC/10/20 and 22; and A/HRC/12/48).

5. The Office for the Coordination of Humanitarian Affairs reports that, as of 22 August 2009, less than 25 per cent of the average weekly amount of humanitarian and non-humanitarian goods allowed into Gaza before the Hamas takeover of June 2007 had entered Gaza. Of those imports, approximately 95 per cent were food and hygiene items, with the remaining 5 per cent consisting of agricultural materials,

[1] See Israel Ministry of Foreign Affairs, press release dated 19 September 2007, "Security Cabinet declares Gaza hostile territory".

medical supplies and non-edible consumables. As reported in the media, in February 2009 the Israeli security cabinet decided that any relaxation in the blockade regime would depend on progress in the negotiations for the release of the captured Israeli soldier Gilad Shalit.[2]

6. Those heavy import restrictions, coupled with a near total prohibition on exports, have had a devastating effect on the Gaza economy. The blockade has also severely impaired the realization of a wide range of economic, social and cultural rights, as well as the civil and political rights of the Gaza population, as described below.

Right to food

7. Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights states that all persons have the right to "an adequate standard of living for himself and his family, including adequate food". The Israeli blockade of Gaza has impeded the flow of goods, including food and, at its peak, created a serious shortage in basic commodities, including wheat flour, meat, canned foods and beverages. A majority of the Gazan population (65 per cent) currently live below the income poverty line, while more than half of those (37 per cent) live in extreme poverty.[3]

8. On 22 March 2009, the Government of Israel announced its decision to allow unrestricted entry of all foodstuffs as long as the source was approved by the Israeli authorities. Nevertheless, while some food products, medical supplies, stationery and industrial/electrical appliances have been allowed, the quantities remain far short of the needs of Gaza's 1.5 million inhabitants.[4] Other food items, including baby formula, tea, some canned food and jam, remained barred even after the Israeli Government's announcement. Finally, it should be noted that the right to food is not primarily about food aid; it is rather about being able to feed oneself by enjoying an adequate livelihood.

Right to health and right to water

9. Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights states that all persons have the right to the "highest attainable standard of physical and mental health". One element of that right, as noted by the Committee on Economic, Social and Cultural Rights in its general comment No. 15, is the right to water (see E/C.12/2002/11).

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[2] See *Haaretz*, "Hamas: Israel stabbed Egypt in the back over Gaza truce", 18 February 2009. See also Israel Ministry of Foreign Affairs Newsletter, "Statement from PM Olmert's Media Adviser", 14 February 2009, which emphasized that the security of the residents of southern Israel and the release of Gilad Shalit were currently the top priorities and that as such Israel would not reach understandings on a lull before Gilad Shalit's release.

[3] See United Nations Development Programme, "Inside Gaza: attitudes and perceptions of the Gaza Strip residents in the aftermath of the Israeli military operations", February 2009. "Below the poverty line" is defined as households of two adults and four children with a monthly income of NIS 2,000 (US$ 500) or less. Extreme poverty is defined as households of two adults and four children with a monthly income of NIS 1,000 (US$ 250) or less, about NIS 5.5 (US$ 1.375) per person per day.

[4] In the period 2 to 9 March 2009, for instance, the quantities of food supplies allowed into Gaza were estimated at 81 per cent of Gaza's weekly needs. Medical supplies were estimated at 5 per cent, educational stationery goods at 3 per cent and industrial/electrical appliances at 1 per cent.

10. Electricity cuts, together with Israeli attacks on Gaza's water and sewage systems during Operation Cast Lead, left both systems on the verge of collapse; 48 of Gaza's 130 water wells were not functioning due to lack of electricity and damage to pipes. Approximately 45 additional water wells were operating only partially for the same reasons.[5] Restrictions on the entry of construction materials have greatly hampered the repair of those pipelines and water wells. Approximately 10,000 people lack access to the water network, and about 60 per cent of the population do not have continuous access to water.[6]

11. In addition, since sewage treatment plants could not be repaired due to the ban on the import of construction materials, between 50 and 80 million litres of untreated and partially treated sewage have been discharged daily into residential areas and into the Mediterranean Sea since January 2008, causing serious environmental and health problems.[7] According to the World Bank, only 5 to 10 per cent of wells in the Gaza Strip yield safe drinkable water.[8] A recent report by the United Nations Environment Programme warns that Gaza is on the verge of water and sanitation collapse. It identifies as a key concern the increased salinity from salt water intrusion caused by over-abstraction of the ground water, as well as pollution from sewage and agricultural run-off.[9]

12. Available data indicate several worrying trends in the health situation for Gazan residents, including a significant increase in watery diarrhoeal disease, a rise in stunting levels and high levels of anaemia among children 9 to 12 months. A study published in March 2009 by the prominent British medical journal *The Lancet* concluded that Israeli restrictions on the movement of people and supplies into Gaza contributed to a "stunting problem" among children less than five years of age. The study stated that the rate of stunting among children had risen to over 10 per cent following Operation Cast Lead.[10] In addition, current pollution levels in Gaza are such that infants in the Gaza Strip are at risk from nitrate poisoning, causing the so-called "blue-baby syndrome".[11]

13. The Gaza Central Drug Stores reported that of the list of 416 essential drug items and 596 essential disposable items, 72 and 111, respectively, were at zero stock level during June 2009. In addition, difficulties were increasing for patients requiring emergency care to leave Gaza, sometimes resulting in the death of the patients concerned. As of 31 August 2009, the World Health Organization (WHO) confirmed that since the beginning of 2009 22 persons had died as a result of their inability to obtain access to medical treatment outside the Gaza Strip. According to WHO, only 68 per cent of applications to leave Gaza for medical treatment were approved in June 2009, while 30 per cent were delayed and 2 per cent denied.

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[5] See GISH Legal Centre for Freedom of Movement, "Gaza electricity, water and sewage systems on verge of collapse", news release, 4 January 2009.

[6] See United Nations News Centre, "Gaza water crisis prompts United Nations call for immediate opening of crossings", 3 September 2009.

[7] Ibid.

[8] Similarly, according to Amnesty International, 90 to 95 per cent of the water from the only water resource in the Gaza Strip, the Coastal Aquifer, is contaminated and unfit for human consumption.

[9] See United Nations Environment Programme (UNEP), "Environmental assessment of the Gaza Strip following the escalation of hostilities in December 2008-January 2009", September 2009.

[10] See Rita Giacaman et al., "Health status and health services in the occupied Palestinian territory", *The Lancet*, 7 March 2009; a summary of the study appeared in *The Guardian* on 5 March 2009.

[11] See UNEP, loc. cit.

Right to work and to an adequate standard of living

14. The blockade of Gaza has had a drastic impact on the ability of people to work (article 6 of the International Covenant on Economic, Social and Cultural Rights) and maintain an adequate standard of living (article 11). Coupled with the ban prohibiting persons from leaving Gaza, the prohibition of exports and the ban on imports of non-humanitarian supplies has resulted in the near total destruction of the Gazan economy. The Palestinian Central Bureau of Statistics (PCBS) reported that over 140,000 Gazans, willing and able to work, were unemployed in the first quarter of 2009, representing 41.5 per cent of Gaza's workforce (compared to 32.3 per cent in the second quarter of 2007).[12] Unemployment among those less than 30 years old reached almost 60 per cent.

15. The agricultural sector in Gaza was greatly damaged during Operation Cast Lead, compounding an already difficult situation owing to the ongoing blockade of Gaza's borders since June 2007. The Palestinian Authority estimates that, during Operation Cast Lead, 17 per cent of the total cultivated area was completely destroyed and the overall direct damage to the agricultural sector was $180 million.[13] An additional $88 million is attributed to indirect losses sustained over a six-month period.

16. By some estimates, 30 per cent of Gazan arable land lies in the so-called "buffer zone".[14] Since Israeli forces stationed along the border enforce restrictions on Palestinian access to land by opening warning fire on approaching individuals, farmers in the buffer zone are unable to farm their lands.

17. Israeli measures that affect Gazan fishing communities provide another example of the negative impact of the blockade. In June 2007, the Government of Israel imposed a restriction on Gazan fishing boats, allowing them to travel only 6 nautical miles from the shore (under the Oslo Accords, the fishing limit was 20 nautical miles). In March 2009, the Government of Israel imposed a further restriction, reducing the authorized area of travel to 3 nautical miles. The Israeli navy enforces the restriction using warships stationed along the Gaza shore, and has at times shot at and arrested fishermen sailing beyond the imposed limit.[15] Restrictions on access to the sea and lack of fishing-related inputs have resulted in an estimated loss in damages of US$ 1.52 million to the fishing industry.

Collective punishment

18. As noted by senior United Nations human rights and humanitarian officials, among others, the blockade of Gaza amounts to collective punishment, which is prohibited under international humanitarian law. Article 33 of the Fourth Geneva

[12] The International Labour Organization (ILO) defines unemployment as persons (15 years old and above) who do not work and are actively seeking a job. The PCBS "relaxed definition" adds to the ILO definition people willing to work but currently not engaged in an active job search (known as "the discouraged").

[13] World Bank, "Economic monitoring note for West Bank and Gaza", April 2009; http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconMonitoringNoteApril09.pdf.

[14] The buffer zone refers to the area approximately one to two kilometres (km) to the west inside the Gaza Strip border with Israel.

[15] According to the Palestinian Centre for Human Rights, an estimated 50 fishermen were arrested during the same period, while 31 boats, small boats and other pieces of fishing equipment were confiscated.

Convention states that "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or terrorism are prohibited. [...] Reprisals against protected persons and their property are prohibited."

B. Continuing armed conflict and the firing of rockets against Israeli civilian areas

19. In paragraph 5 of its resolution 63/98, the Assembly expressed grave concern at the firing of rockets against Israeli civilian areas resulting in loss of life and injury. Rocket and mortar attacks by Palestinian armed groups in Gaza launched indiscriminately into southern Israel continued during the reporting period, especially prior to and during Operation Cast Lead.

20. The report of the United Nations Fact-Finding Mission on the Gaza Conflict (see A/64/490, annex) details the indiscriminate nature of these attacks and the deaths and injuries to civilians that resulted. It noted that rocket attacks have damaged houses and schools in southern Israel, and in one case a synagogue. It found that those attacks constituted a deliberate attack against a civilian population. The report noted the high level of psychological trauma suffered by the civilian population inside Israel. For example, some 72-94 per cent of children in Sderot suffered from post-traumatic stress disorder according to data gathered by an Israeli organization in October 2007. The report found that rocket and mortar attacks and related school closures and interruptions had adversely affected the right to education of children and adults. The rocket attacks also had an adverse impact on the economic and social life of the communities affected (see also A/HRC/12/37, A/HRC/10/20 and A/HRC/10/22).

C. Restrictions on the freedom of movement of Palestinians in the West Bank and East Jerusalem

21. The severe restrictions on the freedom of movement of Palestinians living in the West Bank represent a major human rights concern, and continued in the period under review. Those restrictions are implemented through a combination of physical obstacles (e.g., checkpoints, road blocks and the Wall) and administrative and legal restrictions (e.g., closed military zones, prohibited roads and permit requirements), all of which affect Palestinian vehicular and pedestrian access throughout the West Bank and East Jerusalem.

22. The construction of the wall in the West Bank continued, albeit at a slower pace during the reporting period, though some reports indicate that budgetary and other considerations are preventing further construction.[16] In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (see A/ES-10/273 and Corr.1), the International Court of Justice pointed out that the wall is in contravention of Israel's obligations under international law, insofar as it departs from the Green Line. Based on the planned route (total 709 km), approximately 85 per cent of the wall would be in the West Bank and not along the internationally recognized 1967 armistice line between Israel and the West Bank,

[16] See Amos Harel, "West Bank fence not done and never will be, it seems", *Ha'aretz*, July 2009.

which was at the time controlled by Jordan (Green Line). Almost 9.5 per cent of the land of the West Bank (including East Jerusalem) remains either west of the Wall or in enclaves created by the route.

23. In its advisory opinion, the International Court of Justice also stated that the construction of the wall in the Occupied Palestinian Territory should cease and the portions already built in occupied territory should be dismantled, and called on Israel to make reparations for the "requisition and destruction of homes, business and agricultural lands". Approximately 200 km of the wall has been built since the advisory opinion was issued, with 58 per cent of the route constructed to date.

24. In the northern West Bank, where the area between the Wall and the Green Line was declared closed by military order in October 2003, Palestinians residing in this area (commonly known as the "seam zone") require resident permits to continue to live in their own homes.[17] They face restricted access to health and to education services, and are cut off from family and social networks that are generally located on the "Palestinian" side of the wall. It is estimated that 35,000 West Bank Palestinians will reside between the wall and the Green Line once construction is complete, in addition to the majority of the Palestinian residents of East Jerusalem.

25. Beyond the wall, hundreds of checkpoints or other physical obstructions (dirt piles, concrete blocks, boulders, trenches, fences and iron gates) restrict the movement of Palestinians in the West Bank. Most of the checkpoints are located well inside the West Bank, up to several kilometres from the Green Line.[18]

26. Approximately 1,150 km^2, more than 20 per cent of the West Bank, are designated by Israel as closed military zones. In addition, over 600 km^2, 10 per cent of the West Bank, are designated as natural reserves whose use, including grazing, is prohibited. In addition, areas in the Jordan Valley, the eastern slopes of Bethlehem and the Hebron governorates, which were previously designated as closed military zones or natural reserves, were further restricted from access to Palestinian farmers and herders during May 2009.

27. Furthermore, access to approximately one third of the West Bank, including East Jerusalem, is completely prohibited to Palestinians without a special permit[19] issued by the Israeli military. Even with a special permit, entering these restricted areas driving a vehicle with a Palestinian number plate is prohibited under all circumstances.[20]

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[17] The Association for Civil Rights in Israel, an Israeli NGO, states that these permits "are given for short periods if at all, and following which the residents must again knock on the doors of the [Government of Israel] in the hope that they will consent to a renewal. The 'permits regime' applies only to Palestinians; Israelis, Jews who are not Israeli citizens and even tourists can all enter and leave the area at will".

[18] See B'tselem, "Forbidden roads: Israel's discriminatory road regime in the West Bank", August 2004. See also, for example, Association for Civil Rights in Israel, "State announces West Bank road 443 to remain segregated until May 2010", 26 August 2009.

[19] Since 2002, all Palestinian ID-holders resident within the West Bank are required to obtain a permit (the Special Movement Permit at Internal Checkpoints in Judea and Samaria) in order to cross a "boundary" — the term the Israel Defense Forces use to refer to the checkpoints, gates or other obstructions which lay between the West Bank, the seam zone (the area between the barrier and the Green Line), and East Jerusalem/Israel, or other closed or restricted areas.

[20] See World Bank Technical Team, "Movement and access restriction in the West Bank: uncertainty and inefficiency in the Palestinian economy", 9 May 2007.

28. Those severe restrictions amount to a violation of the right to freedom of movement[21] and result in Palestinians being effectively prevented from exercising their rights, including the right to work (article 6 of the International Covenant on Economic, Social and Cultural Rights), the right to an adequate standard of living (article 11), the right to health (article 12), and the right to education (article 13). The International Court of Justice has found that both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights remain applicable in the West Bank, and in its totality the regime restricting the freedom of movement of the Palestinian population is in violation of Israel's international obligations under those Conventions.[22]

D. House demolitions and forced displacement in Area C and East Jerusalem

29. Israeli planning policies are severely restricting the construction of new housing for Palestinians in the Occupied Palestinian Territory, particularly in East Jerusalem and Area C[23] of the West Bank. Permits for new houses are rarely given and homes of West Bank or East Jerusalem ID-holders are frequently demolished on the basis that they had been built without the requisite building permission and were therefore illegal structures. That justification fails to take into account the discriminatory effects on Palestinians in East Jerusalem resulting from the application of zoning, planning and construction laws and the denials of permits. For example, between 1996 and 2000, the number of recorded building violations was four and a half times greater in Israeli areas (17,382 violations) than in the Palestinian areas of East Jerusalem (3,847). Yet the number of demolition orders issued in West Jerusalem was four times less (86 orders) than in East Jerusalem (348).[24] Between January 2008 and July 2009, a total of 552 structures, both residential and non-residential, were demolished, mainly due to lack of building permits, in Area C and East Jerusalem.[25]

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[21] Article 12 of the International Covenant on Civil and Political Rights states that "Everyone lawfully within the territory of a State shall, within that territory, have the right of liberty of movement".

[22] See International Court of Justice advisory opinion on the wall, paras. 102-113, in which the Court concluded that the protection offered by human rights conventions do not cease in cases of armed conflict, and that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are applicable in respect of individuals within its jurisdiction, even concerning those individuals under its jurisdiction but residing outside its own territory.

[23] Israel controls both security matters and civil affairs, including planning and construction in Area C, which comprises almost 61 per cent of the West Bank. Given the interrelation between Areas A and B, both of which are fragmented and surrounded by Area C, and Area C, the Israeli control of the latter affects not only the Palestinians whose homes are within it. It also affects the development prospects of every community in the West Bank and the interaction between those communities.

[24] See World Bank, loc. cit.

[25] Based on the Office for the Coordination of Humanitarian Affairs data as of 15 July 2009. In the first quarter of 2009, at least 17 structures, including 14 homes, were demolished in East Jerusalem. In total, 55 persons were affected by these demolitions and 49 of them, including 29 children, were displaced.

30. In East Jerusalem alone, from January to July 2009 at least 194 persons were forcibly displaced as a result of home demolitions conducted by the Israeli authorities. In late June 2009, the municipality of Jerusalem reportedly announced that it was considering a freeze on the demolition of 70 per cent of homes that had been built without a permit in East Jerusalem.[26] However, demolitions continue. In August 2009, the Office for the Coordination of Humanitarian Affairs cited "conservative estimates" of more than 1,500 pending demolition orders in East Jerusalem.

31. Some neighbourhoods face the prospects of mass demolitions.[27] In the Silwan neighbourhood of East Jerusalem, some 90 houses are threatened with demolitions, which would potentially displace about 1,000 persons. In Sheik Jarrah, an area in central East Jerusalem, 475 residents could face potential eviction as the ownership of their homes is contested by Israeli settlers. On 2 August 2009, the Israeli authorities evicted the Al Ghawi and Hanoun families from their homes in Sheik Jarrah, following which 53 Palestinians were left homeless.[28] The international community has raised serious concerns over ongoing forced evictions in East Jerusalem and Area C.

32. Israeli home-demolition policies are not confined to East Jerusalem. Every year, hundreds of Palestinian-owned structures are demolished in Area C — which includes approximately 60 per cent of the West Bank over which Israel retains control of development planning — for lack of building permission. As for East Jerusalem residents, thousands of Palestinian families in Area C face the constant threat of demolitions due to outstanding demolition orders. Entire communities, such as Khirbet Tana in the Nablus governorate and Al Aqaba in the Tubas governorate, are at risk of displacement due to pending demolition orders. In the first quarter of 2009, the Office for the Coordination of Humanitarian Affairs reported the demolition of 25 Palestinian-owned structures, including nine residential structures in Area C owing to lack of permits. The demolitions resulted in the displacement of 46 Palestinians, including 30 children. All the displaced were living in or next to the E1 area to the east of East Jerusalem, which is planned for settlement expansion to link the large Maale Adumim settlement with Jerusalem. There are some 3,000 outstanding demolition orders in Area C.

33. In its review of Israel's tenth to thirteenth periodic reports in 2007, the Committee on the Elimination of Racial Discrimination expressed concern regarding the "disproportionate targeting of Palestinians in house demolitions" and reiterated "its call for a halt to the demolition of Arab properties, particularly in East Jerusalem, and for respect for property rights irrespective of the ethnic or national origin of the owner" (see CERD/C/ISR/CO/13). Also, the Committee on Economic, Social and Cultural Rights in its general comment No. 4 on the right to adequate housing, has stated that "instances of forced eviction are prima facie incompatible

[26] The Israeli Committee against Home Demolitions notes that freezing the demolition of 70 per cent of homes with pending demolition orders would still leave 6,000 homes to be demolished.

[27] For example, the execution of pending demolition orders in the Tel Al Ful in Beit Hanina, Khalet El'Ein, Al Abbasiya in Athuri and Wadi Yusul could affect a combined total of 3,600 persons. Planning Crisis in East Jerusalem, April 2009-Pg2: Special Focus OCHA-OPT http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf.

[28] The properties were given to an Israeli settler organization, which plans to build a new settlement in the area.

with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with relevant principles of international law" (see E/1992/23, annex III).

34. Another concern is the policy of demolishing or sealing homes in the West Bank and Gaza as a means to punish the families of Palestinians who are alleged to have carried out attacks against Israeli citizens and to deter similar actions by others. In implementing that policy, from October 2001 to the end of January 2005 Israel demolished 664 houses, leaving 4,182 persons displaced.[29] On 17 February 2005, the Minister of Defence of Israel announced a cessation of punitive house demolitions, partly because it was impossible to conclude that such actions were effective in preventing terrorist attacks.[30] However, the practice of punitive house demolition was reintroduced in January 2009 pursuant to a judgement of the Israeli High Court regarding the demolition of a house in East Jerusalem belonging to the family of Alaa Abu-Dahim, who killed eight students in a school in West Jerusalem in March 2008.[31] On 7 April 2009, Israeli security forces demolished an apartment in East Jerusalem belonging to the family of a Mr. Dwiyat, who had carried out a bulldozer attack in Jerusalem in 2008.[32]

35. Punitive home demolitions are a violation of international humanitarian law, in particular article 33 of the Fourth Geneva Convention, which states that "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or terrorism are prohibited. [...] Reprisals against protected persons and their property are prohibited". The Committee against Torture, in its recent concluding observations, has also stated its concern at the reinstatement of punitive house demolitions (see CAT/C/ISR/CO/4).

E. Palestinian children in Israeli detention

36. According to NGO sources, an estimated 6,500 Palestinian children were arrested and detained in Israeli prison facilities between September 2000 and August 2008.[33] Information published by Defence for Children International-Palestine, an international NGO, states that, as of September 2009, 326 Palestinian children were in Israeli detention.[34] According to the same NGO, that number has on average remained generally constant since 2007, although there was a significant increase in the numbers of detained children in the first few months of 2009.

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[29] See B'tselem, "House demolitions as a punishment: security forces demolish house of family of perpetrator of attack in Jerusalem", 16 April 2009.

[30] Ibid.

[31] The judgement reinstates the policy of punitive house demolitions; for an English translation of the case filed by an Israeli NGO, HaMoked, see http://www.hamoked.org.il/items/110465_eng.pdf.

[32] For more details, see B'tselem, loc. cit.

[33] Defense for Children International, "Palestinian child prisoners: the systematic and institutionalized ill-treatment and torture of Palestinian children by Israeli authorities", June 2009.

[34] It should be noted that those figures include the numbers of children temporarily detained at Israel Defense Forces facilities. Hence, they could be somewhat higher than Israeli Prison Services figures. At the end of 30 September 2009, B'tselem records indicate 315 minors in detention.

37. Palestinians in the West Bank are subject to Israeli military law, which comprises mainly military orders issued by the military command. In addition, the vast majority of Palestinians detained in Israeli prisons and detention centres, including children, are detained in facilities within Israel.[35] That practice violates article 76 of the Fourth Geneva Convention, which states that "Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein". In addition, it often makes it impossible for the families of detainees to visit them. Those practices are of particular concern in the case of children. Article 37 (c) of the Convention on the Rights of the Child states that "every child deprived of liberty shall [...] have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

Age of criminal responsibility

38. In article 2, the Convention on the Rights of the Child states that States parties should respect and ensure the rights stipulated in the Convention without "discrimination of any kind".[36] Despite Israel's obligations under the Convention, Israeli legislation openly discriminates against Palestinian children residents of the Occupied Palestinian Territory with regard to criminal responsibility. Israeli legislation applicable to Israeli citizens, including settlers, defines a child as any person less than 18 years of age. On the other hand, Israeli military law applicable to Palestinian residents of the West Bank defines a Palestinian child as a person under the age of 16.[37] Children over the age of 16 are therefore subjected to the same arrest, interrogation, trial and imprisonment procedures as adults. The age of criminal responsibility is stipulated at 12 by Israeli military orders, and, in practice, children from that age are subject to the same procedures as adults despite being defined as minors. The Committee on the Rights of the Child has recommended that Israel "rescind the provision of Military Order No. 132 concerning the definition of the child and ensure that its legislation conforms to articles 1 and 2 of the Convention" (see CRC/C/15/Add.195). Those concerns were echoed by the Committee against Torture (see CAT/C/ISR/CO/4).

39. Furthermore, Israeli military courts often sentence children according to the age at the time of sentencing (or, in some cases, at the time when the indictment is issued) and not the time of the crime. Cases have been documented of children who were under 16 years of age when they were detained but sentenced as adults since they had reached 16 or over by the time of final sentencing.[38]

40. While international law does not prohibit the detention of children, article 37 (b) of the Convention on the Rights of the Child explicitly provides that the deprivation of liberty, including arrest, detention and imprisonment, should be used only as a

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[35] See Palestinian Commission on Human R Arbitrary detention, ill-treatment and torture"; see also joint press release entitled "Chil otection agencies concerned about abuse of child detainees" (http://www.unicef.org/oPt/1 _STATEMENT_JUNE_9.pdf).

[36] In addition, general comment No. 10 of Committee on children's rights in juvenile justice also states that "States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally" (see CRC/C/GC/10).

[37] Military Order No. 132 pertaining to juvenile delinquents in the West Bank was adopted in September 1967; see also: Defense for Children International, loc. cit.

[38] See Defense for Children International, loc. cit.

measure of last resort and for the shortest appropriate period of time.[39] Furthermore, article 40 of the Convention on the Rights of the Child mentions a number of steps to be taken in the case of a child alleged as, accused of, or recognized as, having infringed the penal law. That would include, for example, the right to be informed promptly and directly of the charges against her or him and, where appropriate, to have legal or other appropriate assistance through his or her parents in preparation and presentation of his or her defence.[40] The information available to the Office of the United Nations High Commissioner for Human Rights indicates that children are often only informed of the charges after they have been detained for some time and do not have a meaningful opportunity to prepare a defence against the charges (see also paras. 41-50 below).[41]

Ill-treatment and abuse

41. In the majority of cases documented by NGOs, throwing stones at moving Israel Defense Forces (IDF) vehicles or the wall[42] is the crime with which children are charged.[43] Children are often arrested at home in the middle of the night or early hours of morning,[44] and a confession obtained during interrogation is almost invariably the sole piece of primary evidence used by the prosecution.[45]

42. Ill-treatment of Palestinian children has been reported both at the moment of the arrest and during interrogation.[46] Methods of ill-treatment and abuse reportedly include beatings, being handcuffed in painful, contorted positions for long periods of time, threats of sexual abuse, hooding the head and face in a sack and *Shabah*.[47] In one case documented by the Office of the United Nations High Commissioner for Human Rights,[48] a 14-year-old-boy resident of the village of Qatanna was arrested on 21 March 2009 by soldiers across the street from his home, after other children nearby had thrown stones at an IDF vehicle. While being transferred to an Israeli military camp, the soldiers slapped him several times, handcuffed and blindfolded him. The boy stated that the handcuffs were too tight and caused him great pain and that the blindfold may have been coated in tear gas since his eyes were burning the entire time. After repeated appeals at the police station, a soldier noted that the

[39] For more information, see general comment No. 10 (CRC/C/GC/10).

[40] The provisions of this article essentially mirror article 14 of the International Covenant on Civil and Political Rights.

[41] See Defense for Children International, loc. cit. In addition, a small number of children are detained under Israeli provisions allowing for administrative detention, which has even fewer safeguards than detention under normal military law and has been the subject of concern by the Human Rights Committee. According to UNICEF, the number of children held in administrative detention at any given time in 2008 ranged from three to 18. At any given time through June 2009, the number ranged from one to six, and as of June 2009, one child remained in administrative detention. For further details on the issue of administrative detention, see A/HRC/12/37.

[42] The wall is treated for these purposes as an IDF facility, and, as such, throwing stones at the wall carries a maximum penalty of 10 years imprisonment.

[43] Under military orders in force in the West Bank, throwing stones can carry a maximum charge of 20 years imprisonment.

[44] Defense for Children International, loc. cit.

[45] Ibid.

[46] Ibid. DCI-Palestine describes the ill-treatment and torture of Palestinian children by IDF as "widespread, systematic and institutionalized".

[47] Ibid. The Shabah position entails forcing a person to stand or sit in extremely painful and harmful positions, in most cases with hand tied together and eyes blindfolded.

[48] OHCHR interviews were held in June 2009.

boy's hands were turning blue and took off his handcuffs and blindfold. He was then subjected to interrogation for four hours, during which an interrogator beat his face and ears with the back of his hand, approximately 40 times.

43. Under international law, no person should ever be subjected to torture, under any circumstances. Article 2 (2) of the Convention against Torture states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture" (see also article 7 of the International Covenant on Civil and Political Rights).

44. In its concluding observations and recommendations to Israel's fourth periodic report in May 2009, the Committee against Torture expressed "deep concern at reports from civil society groups that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the [Convention against Torture] in order to obtain confessions". The Committee was further concerned by the allegations that "approximately 700 Palestinian children annually were charged under military orders and prosecuted by Israeli military courts and that 95 per cent of these cases have relied on confessions as evidence to obtain a conviction" (see CAT/C/ISR/CO/4).

Fair trial and lack of education in detention

45. It is often the case that Palestinian children arrested by Israeli soldiers are not promptly advised of the charges against them or of their rights, and are not given immediate access to a lawyer or allowed contact with a parent or other guardian. Children are often forced into signing confessions in Hebrew, a language which in most cases they do not understand. That confession is then used as the primary piece of evidence against them in a military trial.[49]

46. In the same case described in paragraph 42 above, the boy was presented with and signed a paper in Hebrew, a language which he did not understand. While he was told it was only an administrative paper for his file, he found out at trial that it was a confession. At his second court hearing, he was also informed for the first time that his lawyer had agreed to a plea bargain on his behalf. The boy was finally released on bail on 8 April and later sentenced to 40 days imprisonment. After the family paid an NIS 8,000 fine (approximately US$ 2,000), the sentence was reduced to 19 days (with a three-month suspension), the time he had already spent in prison.

47. A December 2007 report by Yesh Din, an Israeli NGO, reveals that Israel's military court system for Palestinian suspects in the West Bank produced almost automatic convictions, with more than 99.7 per cent of those accused being found guilty and 95 per cent of the cases ending in a plea bargain. The average hearing was just two minutes long, interpretation was inadequate and the Arabic-speaking accused often did not understand the charges brought against him or her. In the majority of cases, the trial was the first time for the accused to meet his or her lawyer.[50] These general traits have been corroborated by the Office of the United Nations High Commissioner for Human Rights monitoring of military trials in the West Bank.

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[49] See, for example, Defense for Children International, loc. cit.

[50] See Yesh Din, "Backyard proceedings: the implementation of due process rights in the military courts in the Occupied Territories", December 2007.

48. Persons accused of a criminal offence have the right to a fair and public hearing, the right to be presumed innocent, the right to be informed at the time of arrest of the charges against him or her, the right to be brought promptly before a judge, the right to have adequate time and facilities for the preparation of his or her defence and the right to be tried without undue delay, among others (see articles 9 and 14 of the International Covenant on Civil and Political Rights). Article 9 (3) of the International Covenant on Civil and Political Rights also states that it should "not be the general rule that persons awaiting trial shall be detained in custody". In line with article 14 (3) g of the International Covenant on Civil and Political Rights, article 40 (2) (b) iv of the Convention on the Rights of the Child requires that a child be not compelled to give testimony or to confess or acknowledge guilt.

49. In late July 2009, Israel issued a military order to establish new military juvenile courts in the West Bank to try children under 16 years of age. The order also established a statute of limitations of two years for offences committed by children, as opposed to the situation before, where there was no such statute (though in the new order that statute may be removed by the chief military prosecutor).[51] At the time of preparation of the present report, it remained to be seen how the order would be implemented.

50. Educational opportunities for children in detention are in most cases inadequate. Palestinian children receive only limited education in two out of the five prisons where they are kept, and there is no education provided for in any of the interrogation or detention centres, where children are often sometimes kept for three months or more.[52]

III. Recommendations

51. **The Government of Israel should end the blockade of Gaza, which is having a negative impact on the humanitarian and human rights situation of the civilian population. In particular, the Government of Israel should allow unimpeded access to Gaza for humanitarian aid and the non-humanitarian goods needed for the reconstruction of properties and infrastructure. Israel should also address effectively and immediately the water, sanitation and environmental crisis in Gaza.**

52. **All parties to the conflict should abide scrupulously by their obligations under international human rights law and international humanitarian law. All allegations of violations of international humanitarian law and human rights violations during the reporting period must be investigated by credible, independent and transparent accountability mechanisms, taking fully into account international due process of law standards. Equally crucial is upholding the right of victims to reparation.**

53. **The Government of Israel should take steps to facilitate freedom of movement for Palestinians in the West Bank. In accordance with the International Court of Justice advisory opinion on the wall, it should immediately cease construction of the wall and dismantle portions already built**

[51] See Amira Haas, "IDF sets up separate court for Palestinian minors", *Haaretz*, 24 August 2009. These reports have been corraborated by Defense for Children International.

[52] See Defense for Children International, loc. cit.

in occupied territory. Israel should also issue viable zoning plans and a less cumbersome process for issuing building permits in a non-discriminatory manner for all in East Jerusalem and other places in the West Bank. Until such time, the evictions and demolitions of Palestinian homes should cease. Victims of forced evictions should also be afforded the possibility of effective redress. Punitive demolitions should cease immediately.

54. **Israel, as the occupying power, should ensure that the rights of children are respected. The Government of Israel should take all necessary steps to address concerns raised in the present report with regard to the arrest and detention of Palestinian children, and should ensure that all detentions be conducted in strict compliance with international human rights law, in particular due process of law standards, with due respect of the vulnerability of children. The Government of Israel should also ensure that all allegations of torture and ill-treatment are promptly and effe 'vely investigated and perpetrators prosecuted. Israel should refrain from discriminating between Israeli and Palestinian children with regard to the age of criminal responsibility. The Government of Israel should ensure that alternative measures to detention are explored and that detention is used only as a last resort.**

55. **The General Assembly and the international community should actively promote the implementation of the decisions, resolutions and recommendations of the General Assembly, the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedure mandate-holders.**